

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

CRIMINAL NO. 16-20732

vs.

HON. ROBERT H. CLELAND

D-4 CLIFFORD FREITAS,

Defendant.

/

**RESPONSE TO MOTION REQUESTING A
JUDICIAL RECOMMENDATION CONCERNING
RRC/HALFWAY HOUSE PLACEMENT**

The United States of America submits the following response to defendant Clifford Freitas' *pro se* Motion Requesting a Judicial Recommendation Concerning Length of RRC/Halfway House Placement (Docket No. 269).

I. Background

Defendant Freitas was a Macomb Township Trustee who took thousands of dollars in bribes in connection with a multi-million dollar garbage contract. Mr. Freitas was convicted of conspiring to take bribes, and the Court sentenced him to twenty months of imprisonment. Mr. Freitas is seeking a recommendation from the Court to the Bureau of Prisons ("BOP") that he receive the maximum placement of twelve months in a halfway house.

The BOP alone determines an inmate's eligibility for RRC placement, with Section 3624(c) providing that the Director of the BOP "shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility." However, any recommendation "By a sentencing court that a convicted person serve a term, of imprisonment in a community corrections facility shall have *no binding effect* on the authority of the Bureau" to "determine or change the place of imprisonment of that person." 18 U.S.C. § 3621(b) (emphasis added).

In his motion, Mr. Freitas asserts that he has participated in several BOP programs in order to aid in his rehabilitation, including dental health, veterans' reentry, and basic cognitive skills. Motion at PageID 3784. In addition, Mr. Freitas claims that he has "expressed exceptional remorse and contrition regarding his commission of his offenses." *Id.* at PageID 3785.

II. Argument

The government opposes the request of Mr. Freitas, and it asks the Court to deny his motion and take no position on the BOP's decision concerning the time of placement in a community corrections facility.

First, Mr. Freitas' criminal conduct, bribery, conviction, and sentencing received public attention. Word of an early placement in a community corrections facility for him could undermine the general deterrent effect of the Court's sentence. In addition, it may also undermine the public's confidence in the Court's sentence for a serious offense given the lack of reasons for the requested recommendation.

Second, given its experience and direct contact with Mr. Freitas, the BOP is in the best position to evaluate his progress towards rehabilitation and his need for reentry assistance. Although Mr. Freitas identifies a number of BOP programs in which he has participated, there is no way to tell from the record whether the identified programs were really needed by him (*e.g.*, a BOP "dental health" program) or were effective, whether any of the programs were successfully completed, and whether he has engaged in any misconduct while in prison. In other words, the Court is not in a position to make a fully-educated recommendation.

Third, given the relatively short nature of Mr. Freitas' prison sentence, it is unclear if he really has a significant need to spend a substantial part of his sentence in a community corrections facility in order to reintegrate into society. It is more likely that imprisonment in a Federal Correctional Institute is serious punishment for a serious crime, and Mr. Freitas is seeking through his motion to reduce that punishment by a placement in an RRC.

Fourth, although Mr. Freitas claims that he “expressed exceptional remorse and contrition” regarding his crimes, his conduct at the sentencing hearing does not bear out that assertion. *See Exhibit A, July 31, 2018 Sentencing Transcript.* Instead of expressing remorse and contrition, Mr. Freitas and his attorney sought to blame Chuck Rizzo, Dino Bucci, and anyone but Mr. Freitas for the fact that he had taken bribes while a sitting township trustee. In addition, Mr. Freitas tried to claim that he had not really taken any bribes, but had instead simply borrowed some money, which he claimed he paid back. As the Court will recall, Mr. Freitas’ position at sentencing was sharply at odds with his own statements in the plea agreement and at the plea hearing. See *id.* at 19-23. The Court itself recognized the “slippage” in Mr. Freitas’ acceptance of responsibility and remorse at the time of sentencing. *Id.* at 23. This is not to say that Mr. Freitas should be punished, just that he should not be rewarded for what he now claims is “exceptional remorse,” when in fact it is not.

Respectfully submitted,

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Dated: February 4, 2019

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2019, I electronically filed the foregoing document with the Clerk of the Court using the ECF system.

I further certify that service of the foregoing Response to Motion Requesting a Judicial Recommendation Concerning RRC/Halfway House Placement has this 4th day of February, 2019, been made upon Defendant by placing same in a stamped envelope and depositing said envelope in the United States mail addressed as follows:

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Dated: February 4, 2019

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 16-20732

-V-

CLIFFORD FREITAS,

Defendant.

SENTENCING HEARING

BEFORE THE HONORABLE ROBERT H. CLELAND

United States District Judge

Federal Building

526 Water Street

Port Huron, Michigan

July 31, 2018

APPEARANCES:

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Proceedings produced by mechanical stenography.
Transcript produced by computer-aided Transcription.



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1 Port Huron, Michigan

2 July 31, 2018

3 2:29 p.m.

4 * * *

5 THE CLERK: The Court calls case 16-20732, Defendant 4.
6 United States of America vs. Clifford Freitas.

7 Counsel, please state your appearances for the record.

8 MR. BULLOTTA: Good afternoon, your Honor. Michael
9 Bullotta for the United States.

10 MR. GARDEY: Good afternoon, your Honor. David Gardey
11 on behalf of the United States.

12 MR. GARON: Daniel Garon for Defendant.

13 THE COURT: And the defendant, Mr. Freitas, is present
14 as well, I note.

15 The matter is before the Court for sentencing. And in
16 preparation for that, the probation officer who is also
17 present, Ms. Vue, supplied a presentence report, circulated it
18 among counsel. And I believe that it stands un-objected to
19 presently by, in other words, that there are no objections
20 filed by either the Government or the defendant. And I think
21 it is due to be accepted and used in the course of sentencing.

22 For the defendant, is that a correct statement?

23 MR. GARON: It is, your Honor.

24 THE COURT: And for the Government, Mr. Bullotta?

25 MR. BULLOTTA: Yes, your Honor, it is.

1 THE COURT: I will accept the presentence report and
2 its calculations. Let's recite those. The offense level is
3 quite elevated due to the contractual implications of the
4 defendant's contact -- conduct. The amount of money involved
5 and the contracts with which the defendant and the public
6 entity were dealing is quite substantial, and that elevates
7 greatly the offense level 35, criminal history 1. The
8 guideline provision therefore becomes a straight 60 months,
9 which is far below the bottom end of the correctly calculated
10 guideline range. It should be in the neighborhood of 168, I
11 think.

12 Is that right, Mr. Bullotta?

13 MR. BULLOTTA: Yes, your Honor.

14 THE COURT: All right. So with a guideline range of a
15 5-year sentence, the Court proceeds.

16 The presentence report is accepted. The Rule 11
17 agreement should also be accepted. I have a defendant's
18 memorandum regarding sentencing. I have the Government's
19 memorandum regarding sentencing as well, combined with a 5K1.1
20 motion, which we will discuss and I will undoubtedly accept,
21 but I think it should be recited on the record.

22 I have a bond status report from the Pretrial Services
23 officer, Ms. Baltes, recommending self-surrender in the event
24 of a custody sentence. I think that's appropriate, certainly,
25 based on the defendant's behavior.

1 MR. GARON: Thank you.

2 THE COURT: He's been in compliance with all bond
3 conditions and so forth. And also, in view of his cooperative
4 behavior, which the Government will comment upon at an
5 appropriate time.

6 I have a couple of other items. Of course the
7 defendant's sentencing memorandum has attachments, letters and
8 so forth. I was handed papers just minutes before coming on
9 the bench provided by defense counsel that are not matters of
10 record. I'm not -- the probation officer had not been supplied
11 with any such material. I don't know if the Government was or
12 not, but --

13 MR. BULLOTTA: I have, your Honor.

14 THE COURT: You have.

15 MR. BULLOTTA: Yes.

16 THE COURT: So it's not, in that sense, *ex parte*. But
17 I'm wondering, in light of *U.S. v. Hayes*, the 1999 case that
18 noted the impropriety of a sentencing judge relying upon *ex*
19 *parte* supplied victim statements, whether material such as
20 this, that remain undisclosed to the public are properly
21 considered by the Court.

22 Do you have a view about that, Mr. Garon? Have you
23 thought about that?

24 MR. GARON: I have, your Honor. And to be honest with
25 you, the three letters that I submitted, of which of course I

1 did supply to counsel, specifically Mr. Freitas' wife's letter,
2 I thought was one, a highly personal nature.

3 And subsequent to the filing of the defendant's
4 sentencing memorandum, there was a substantial and significant
5 outcry from a number of the Macomb Township residents saying
6 quite -- for lack of a better word, your Honor, people could be
7 incredibly cruel with their comments on the Internet. Comments
8 that people have made --

9 THE COURT: You just experienced that, did you?

10 MR. GARON: Well, no. I mean, I've experienced it --

11 THE COURT: I'm sorry. I was speaking actually in
12 agreement with your principal point. It's --

13 MR. GARON: I learned it in junior high school, I
14 suppose, if nothing else.

15 THE COURT: Right.

16 MR. GARON: But the whole reason of why I did that was
17 specifically because I wished to minimize as best as I could, a
18 public outcry against Mr. Freitas' wife and father, of which
19 those two letters reflect some information on. And I'd ask
20 that the Court consider it. And if you thought that it was
21 inappropriate, I would have no objection, of course, if you
22 choose not to.

23 THE COURT: I think what you could do is submit them,
24 if you think there's an sensible basis, submit them under seal
25 perhaps if there's personally identifying information or other

1 personal --

2 MR. GARON: No, not necessary, your Honor. But more
3 relative to a personal recitation of the defendant and his
4 character from his wife, of which I did not want to make a
5 public spectacle out of.

6 THE COURT: Okay.

7 MR. GARON: And I don't want to delay the proceedings
8 at any point. And if the Court would consider reviewing them
9 under seal, I doubt that counsel would have any objection to
10 that.

11 THE COURT: I'm not sure they can -- I'm not sure under
12 Sixth Circuit precedent, now that I've said it, they can
13 properly be received and sealed permanently.

14 MR. GARON: I don't, I don't wish to muddy the waters,
15 your Honor.

16 THE COURT: I will say this: I have not reviewed them
17 because of my uncertainty as to whether they are proper -- I
18 didn't know who they were from or what --

19 MR. GARON: Yes, sir.

20 THE COURT: -- or what they said or the implication
21 was. They were, just as I said, handed to me a few minutes
22 before coming on the bench this afternoon. I haven't even had
23 -- I haven't had time to read through them, five or six pages,
24 I think in sum total. You don't think can be handled during
25 allocution, Mr. Garon?

1 MR. GARON: I think it could. I did not know the
2 Court's position on whether or not you would allow the
3 defendant's wife to address the Court as part of the
4 sentencing.

5 THE COURT: No. That's not appropriate under the
6 rules.

7 MR. GARON: Yes.

8 THE COURT: In my view.

9 MR. GARON: I'll follow the Court's suggestion, and I'm
10 sure Mr. Freitas will speak to the issues that have been raised
11 in the letters.

12 THE COURT: That's fine.

13 MR. GARON: And we'll proceed from that perspective.

14 THE COURT: That's fine.

15 MR. GARON: Thank you.

16 THE COURT: All right. I'll just basically put them
17 aside and eventually return them to you, I suppose, at that
18 rate.

19 MR. GARON: Very good.

20 THE COURT: All right. The Rule 11 agreement is
21 accepted. I intend to accept the 5K1.1 motion on the basis it
22 stated. You endorse the Court's acceptance of the 5K motion,
23 presumably, Mr. Bullotta?

24 MR. BULLOTTA: Yes, sir.

25 THE COURT: So that will be accepted. The implications

1 of which we'll discuss when Mr. Bullotta's turn to speak
2 arrives. But with the plea having been accepted, the Rule 11,
3 the 5K, the presentence report, there's nothing left but for
4 allocution.

5 And, Mr. Garon, you and Mr. Freitas can use the
6 lectern, if you wish, and proceed to say anything that you
7 wish.

8 MR. GARON: Thank you, your Honor.

9 On behalf of Mr. Freitas, there's really nothing more
10 to add that I haven't already put in the sentencing memorandum
11 and the letters that have been afforded to the Court. But I
12 would like to make a couple of comments relative to the facts
13 and circumstances of the case for the Court's consideration.

14 First off, Mr. Freitas and I have, right from the
15 onset, accepted responsibility for his actions. And to the
16 very, very best that Mr. Freitas could, we have cooperated with
17 the Government. We took a substantial amount of time with the
18 proffer; information was given. And Defendant had, right from
19 the onset essentially fallen on the sword for his activity and
20 has stepped up to the plate in terms of his admission of
21 responsibility, and more importantly, your Honor, the
22 acceptance of his responsibility.

23 It's my opinion, based on a review of the entire
24 record, knowing the facts and circumstances of what this
25 defendant did, that I will be and remain of the opinion that

1 Cliff Freitas very, very much got involved in the Macomb
2 Township way of doing business, having been recruited from
3 members of the Macomb Township Board, and through the actions
4 of his employer. I think that the other individuals were very,
5 very good at recruiting and getting Mr. Freitas to be
6 essentially groomed for the doing of the business that he did.
7 And I think that Mr. Freitas got wrapped up, quite honestly,
8 your Honor, in business that he had never been in, had no
9 experience being in, and shouldn't have ever been in.

10 Somewhere along in the process, your Honor, Mr. Freitas
11 lost the ability to recognize effectively what he was doing and
12 being recruited for was wrong. And whether or not he knew it
13 to be illegal at the time that it was happening, I suppose is
14 an argument, a philosophical argument that we could have
15 throughout all of time.

16 Irrespective of that argument, your Honor, Mr. Freitas
17 has accepted responsibility for what it is that he did. And
18 without question, and there's never been question that the
19 conveyance of the information from one of the township board
20 members through Mr. Freitas to Rizzo without question resulted
21 in the granting of the contract, and that information, he's
22 never stepped back, said he didn't do this. He's always
23 accepted the responsibility for it.

24 But there are two things, really three things that I
25 think are important relative to this Court tailoring a sentence

1 specific to Mr. Freitas that differentiates him from the vast
2 majority of all the other individuals that have been charged
3 and prosecuted in this particular matter.

4 First, it was the one-time conveyance of the
5 information.

6 Second, that the \$7,500 loan that was given to Mr.
7 Freitas was a result of a fairly significant discussion with
8 counsel, preparation of loan documents, and ultimately that
9 money, the \$7,500 was, in fact, repaid.

10 And then the third part of that equation was that there
11 was some talk by Mr. Rizzo, that in the event that Mr. Freitas
12 could get the billing placed on the, the billing for the
13 garbage services placed on the water contract, that there would
14 be an additional \$35,000 bonus, or loan, depending on whose
15 language from the tapes that you prefer to believe, that never
16 came to fruition.

17 Ultimately, Mr. Freitas recused himself and didn't vote
18 on the contract. And I think that's a significant fact amongst
19 all of these things, that Mr. Freitas probably recognized at
20 the time that he was doing this, your Honor, that he shouldn't
21 have gotten involved.

22 The letters that we've submitted to this Court, the
23 counseling and his behavior in the interim basis from the time
24 of the indictment through today are all replete with nothing
25 but accolades about what a good person Mr. Freitas is and

1 always has been. The fact that he's a good father. And of
2 particular importance, your Honor, is the letter from his own
3 son that I think I would like the Court to place particular
4 emphasis on in tailoring your sentence in terms of the
5 ramification of a period of incarceration for Mr. Freitas, and
6 the effect it's going to have on his son that relies upon him
7 for his upbringing and care and maintenance, all of which are
8 detailed in that letter that has been submitted to the Court.

9 Ultimately, your Honor, I think Mr. Freitas got duped.
10 I think he got groomed into this particular situation. It was
11 clearly not a gregarious violation of the pay-to-play policies
12 or practices that have been demonstrated in the media by all of
13 -- by a majority of the other individuals that are charged in
14 this particular scandal.

15 And my recommendation or my request to the Court would
16 be this: In light of the fact that Mr. Freitas has stepped up
17 to the plate, admitted his responsibility, in light of the fact
18 that his participation, while not denigrating the wrong that it
19 was, I think should be differentiated in terms of the di
20 minimus argument from the other players, and the way that the
21 practice of the pay-to-play politics was happening I think is
22 important to be recognized.

23 And again, although not saying it's correct or right in
24 any manner whatsoever, I think in Mr. Freitas' case, it was
25 very much minimized from the practices of the co-defendants in

1 this matter.

2 I think his behavior to the Probation Department in
3 recognition of the pendency of the actions has been nothing
4 short of stellar. He continues his employment, and he
5 continues being a wonderful father and a wonderful son to his
6 family, who of course is present in this courtroom. And all
7 things considered, including the Government's recommendation
8 for departure downward, I think in tailoring an individualized
9 sentence for Mr. Freitas, I think a period of, and a
10 substantial period of probation and home confinement would
11 serve the purposes of the statute in terms of tailoring a
12 sentence specific to this particular individual. And although,
13 certainly we would all recognize that probation is not a piece
14 of cake, I don't see anything from a public standpoint that
15 would substantiate a period of incarceration.

16 I agree with the entire argument about what he did was
17 wrong, but knowing how it happened and knowing why it happened,
18 I think, differentiates Mr. Freitas from everybody else. And I
19 think because of that differentiation, that his sentence should
20 be differentiated in proportion also to his participation or
21 lack of participation in a continuity of the enterprise itself.

22 So I would respectfully request that the Court place
23 defendant on a period of supervised release. I'd ask that the
24 Court impose standard terms and conditions which would
25 essentially reflect those which he has been subjected and has

1 honored as part of his bond conditions and impose that period
2 of probation with a period of home confinement so that he can
3 continue to remain employed, continue to be a productive member
4 of our society, and continue to be a father, which ultimately
5 is the most important thing in his life.

6 Thank you.

7 THE COURT: You could assist the Court in explaining
8 one thing about what you just said.

9 MR. GARON: Yes, sir.

10 THE COURT: You suggested that this is not an example
11 of pay-to-play criminality. I'm having difficulty visualizing
12 how this does not fit in that it encompasses a defendant who
13 essentially says, I'm analogizing here or being imaginative in
14 the description, you give me money and I'll give you inside
15 information that helps your cause. How is that not
16 pay-to-play?

17 MR. GARON: Because, your Honor, because from a factual
18 standpoint, there never really was a demand for money. There
19 was a request for a loan because of a garnishment that Mr.
20 Freitas was being subjected to from an unrelated civil action.
21 They were taking money out of his pocket. He went to Mr. Rizzo
22 and conveyed to Mr. Rizzo the problems that he was having
23 financially and this loan arrangement, however you want to call
24 it, was therein instituted.

25 If this were a situation where Mr. Freitas went to

1 Rizzo and said I demand cash, as all of our cases seem to be,
2 and again, I don't want to litigate the case, your Honor, but
3 my point is, is that the paperwork in Cliff's mind, was a loan.
4 In Cliff's mind, the money that was given to him was a loan.
5 In Cliff's mind, and we're talking about the *mens rea* of his
6 action, in Cliff's mind, that loan was in fact, paid back. His
7 actions of conveying the information from Mr. Bucci, who had
8 given him the loan figure, or excuse me, the figures that
9 should be submitted by --

10 THE COURT: The bid figures.

11 MR. GARON: Thank you, your Honor. The bid figures was
12 given to from Dino Bucci to Freitas, and Mr. Freitas conveyed
13 them to his employer, is different than essentially Cliff going
14 to his employer and saying if you give me an envelope full of
15 cash, if you come to my house and redo my basement, if you hire
16 an attorney to represent me in my divorce, then I'm going to
17 give this to you.

18 The facts in our case, in my opinion, are different
19 than anybody else that we've heard in the media, and things
20 that have been said in this courtroom. And I think it's that
21 differentiation that I'm trying to accentuate to the Court that
22 makes Mr. Freitas different, not less responsible, okay? I'm
23 not saying that he's not less culpable in the commission of the
24 crime. He should have known better, and he probably did know
25 better. But to make it different, I think, the facts in our

1 case do not support that particular culpability that takes it
2 from what he did and puts it in the purview of what all the
3 other defendants did.

4 THE COURT: Okay. Thank you.

5 Mr. Freitas, you are not required to speak, but if you
6 do wish to add anything to the record beyond what your attorney
7 has offered here, this would be the appropriate time. Do you
8 have anything you'd like to add?

9 THE DEFENDANT: Yes, your Honor.

10 I've spent almost three years thinking about this, and
11 I'll start by saying this: I'd like to apologize to many
12 people, the Township, the people of Macomb Township, my fellow
13 board members, in particular, Janet Dunn, and Nancy Nevers, I
14 would like to apologize to them.

15 I ran for trustee because I wanted to do good for the
16 township. I wanted to do good, do good for the community I was
17 raised in. And I did some good things there. And I, I trusted
18 people. I trusted Mr. Bucci. I trusted him. He came to my
19 home. I wasn't going to run for the 2012 election. I wasn't
20 -- I was done. I ran twice unsuccessfully on my own. And Dino
21 came to my house and asked me to run one more time, he said
22 he'd help me. I ran. I got elected. I trusted Dino. He gave
23 no reason not to until this.

24 I started working for Rizzo at the time the garbage
25 contract wasn't even -- I wasn't even aware that there was

1 going to be a grand jury contract up for bid for Macomb
2 Township. I had no idea. And it was a real job. I worked
3 long hours for the Rizzos. I worked hard for them.

4 My paycheck became -- was seized for tax bills, for
5 unpaid taxes to the State of Michigan. The Rizzos knew of this
6 and they offered me a loan. It was an advance on the annual
7 bonus they give all management employees every year. There was
8 loan paperwork, there was payments made through payroll
9 deduction. And then in January, when the annual bonus was
10 paid, it was paid, and I paid taxes out of that money.

11 In hindsight, I shouldn't have done it. I shouldn't
12 have taken the loan. It was wrong. The objects of it was
13 wrong. At the time, I thought that was a loan, that that
14 was -- you know, I talked to counsel. I asked him about it.
15 They said that as long as there's documents of it and there's a
16 payback period and terms, it should be okay. So I went ahead
17 with it and it was paid back in January and the loan was taken
18 out in either October or November and it was paid back that
19 January.

20 In regards to the information passing, I was meeting
21 with the township attorney and Mr. Bucci. And Dino said tell
22 your boss that if these numbers are where we would like to see
23 the contract be, and I passed those to Chuck Rizzo. I did
24 that. I, at the time, I didn't think anything of it. Now,
25 obviously, hindsight is 20/20, it was wrong, absolutely wrong,

1 and I regret it.

2 In regards to the whole thing is, I've spent a lot of
3 time in therapy for the last three years and attending weekly
4 Bible studies and I've done a lot of soul searching. I've
5 worked hard on myself. And I didn't get to this point where
6 I'm here today by myself. I had a little bit of help, but I've
7 been able to forgive Mr. Bucci and the Rizzo family. I found
8 forgiveness for them for using me. I haven't been able to
9 forgive myself. I have to live the rest of my life knowing
10 that I've committed a felony, and I don't know how I'm going to
11 -- how I'm going to face every day knowing that. I'm in
12 therapy over it. I'm working on it but it's going to haunt me
13 forever, that I'm a felon. I served my country in the Air
14 Force. I was proud of being an airman, and I just regret this
15 whole situation.

16 I feel bad that I disappointed so many people. I've
17 disappointed my parents, my wife, my children. And the thing
18 I'm scared most about is my son, Harmon. Harmon's mom is -- I
19 don't want to diminish anybody, so she's difficult and Harmon
20 is afraid to move back home due to some ailments that she has,
21 and I'm scared. I'm scared for my son, Harmon, that he'll be
22 taken out of his home and moved to Harper Woods and changing
23 schools, and in a lifestyle that, or a life that he doesn't, he
24 doesn't belong in.

25 Your Honor, I am sorry for my actions. I am truly,

1 truly remorseful for this whole ordeal. I have, through this
2 whole ordeal, I've managed to maintain employment. I've worked
3 hard, and I continue to work hard. And I'd like to continue to
4 provide for my family and for my son, and I'd like to continue
5 my being a model citizen from here on in.

6 MR. GARON: Tell him about the letter from your wife.

7 THE DEFENDANT: I don't have any notes on that.

8 The wife, my wife wrote a letter, explaining my
9 character in her eyes. And it basically stated that, she wrote
10 that I'm the one that always does everything for my family. I
11 always put everyone before myself and I've always lived that
12 way. I've never been self-serving. I've always served others.
13 I'm the first one to help my parents, the first one to help my
14 sister. Anybody that needs help, neighbors, friends, I have
15 always been that person that people can count on and I'd like
16 to continue to do that.

17 Thank you.

18 THE COURT: All right, sir. Why don't you have a seat,
19 and Mr. Garon.

20 Mr. Bullotta, you have a point of view to express for
21 the Government?

22 MR. BULLOTTA: I do.

23 I have to say, your Honor, I'm a little bit
24 disappointed in what I just heard. You were here, your Honor
25 was here, they were here during his plea agreement -- his

1 guilty plea, I mean. And I would just like to read what's in
2 his guilty plea, which is consistent with what he admitted to
3 when he was confronted initially by the FBI.

4 I was prepared to stand here and say the defendant has
5 been contrite, that he's admitted his wrongdoing. And now I
6 just got done hearing his attorney call him basically a dupe,
7 being duped by Rizzo and Bucci and other people. And I heard
8 him just say, the defendant just said that he was being used by
9 his people and he understood this to be a loan. That's simply
10 not the truth, and that's not what the evidence revealed and
11 that's not what defendant said in his plea agreement.

12 In his plea agreement, he said, the defendant, this is
13 on page 3, his factual basis, the defendant told the executive,
14 which is Chuck Rizzo, he would use his official position with
15 the township in order to help company A, which was Rizzo,
16 obtain the contract, the trash contract with Rizzo, but that he
17 wanted to be paid for his assistance. The executive, Chuck
18 Rizzo, offered and the defendant accepted a promise to pay
19 \$7,500 for his assistance in getting the contract.

20 That's what he said under oath, basically admitted to
21 under oath during the plea agreement -- plea hearing, and I
22 remember him being very forthright. I'm, quite frankly, taken
23 aback by this.

24 So I think it's very dubious that a
25 40-something-year-old man, who has graduated high school and

1 has an associate's degree, somehow, some sort of naive person
2 who doesn't understand what a bribe is, because he told us he
3 did, and he admitted that during his plea, so I think the Court
4 should completely discount that, that this was some kind of
5 accident; that he was some sort of unwitting participant in
6 this whole bribery scheme.

7 In fact, the defendant was a public official. In fact,
8 the defendant was elected in 2012. And Chuck Rizzo actually
9 hired him in 2014 with an eye towards getting that contract
10 when it went out to bid in 2015. So in a sense, the hiring of
11 the defendant, who, by all means, by all accounts, from
12 individuals he worked for in the company was completely
13 unqualified to have that position. Frank Francisco, who was a
14 supervisor, stated that he was confounded by the fact someone
15 with no qualifications was hired for the job by Chuck Rizzo.
16 But we can surmise, I believe and we know actually, we don't
17 have to surmise, we know from talking to Chuck Rizzo while he
18 was cooperating that was indeed in Chuck Rizzo's mind, to hire
19 Mr. Freitas to work at Rizzo Environmental Services because
20 that could only help him when the time came. And when the time
21 came, the defendant, he admitted this in his plea agreement and
22 in court, he asked for the money. He asked for -- he asked for
23 to be paid, if they got the contract, and Mr. Rizzo offered
24 \$7,500. He accepted.

25 The only reason that it turned into a loan at Rizzo

1 services is because the CFO, who is a gentleman by the name of
2 Wade Stevenson, he learned about the payments, and he said we
3 can't be paying extra money to somebody who is a township
4 official in a contract that we just got. That's why they
5 turned it into a loan. It was not ever conceived to be a loan.
6 And in fact, during Mr. Chuck Rizzo's undercover cooperation,
7 he paid him, and he paid Mr. Freitas cash to make up for this
8 "loan" because it was never supposed to be a real loan and the
9 defendant gladly accepted the cash.

10 So I just wanted to correct the record. I feel like
11 there's a rewriting of history going on here. I'm surprised to
12 hear it, quite frankly, because apart from this moment, the
13 defendant has actually been very cooperative, has been
14 forthright, has -- this is the, I guess you could say the
15 positive side -- he did confess and cooperate immediately. He
16 did help the FBI uncover vast fraud by Mr. Rizzo Senior and
17 Junior inside RES, Rizzo Services.

18 He did agree to testify against Chuck Rizzo, his dad
19 and Quintin Ramanauskas. He was prepared to testify. He
20 didn't have to, have to do that because they all pleaded
21 guilty, but he had a part in their pleading guilty, which is
22 why the Government moved for a downward departure. But I want
23 to point out, and the Court I'm sure understands this, since
24 you mentioned that the actual guideline range based on the \$16
25 million trash contract is stratospheric, and it's 168 months.

1 So the defendant's already being given quite a benefit
2 in the charge bargain of pleading guilty to a five-year
3 conspiracy to commit bribery felony. He already had -- went to
4 168 to 60 months, and then down from there, the Government has
5 asked for 20 months. And I think with a public official who, I
6 submit, did know exactly what he was doing, was not duped, was
7 not being used, he did, he did know and he told us he did. And
8 so I think the Court should rely on the statements in the Rule
9 11 agreement and what the defendant said in court when he
10 pleaded guilty and was having a moment, I think of true
11 remorse, unlike right now. I ask for a 20-month sentence.

12 Thank you.

13 THE COURT: So the Government, with that, stands behind
14 the 5K1.1 motion, and the recommendation specifically provided
15 in the memorandum?

16 MR. BULLOTTA: Yes.

17 THE COURT: A little slippage in the joints or a little
18 oxidation on the cooperation aspect of it as demonstrated here
19 today. I don't detect Mr. Freitas has abandoned his
20 cooperative point of view, but perhaps in an effort to put a
21 best foot forward, or describe in the best light or most
22 favorable light --

23 MR. BULLOTTA: Quite a bright light, quite a different
24 light, but yes.

25 THE COURT: A light that had not previously emerged.

1 All right. Thank you, Mr. Bullotta.

2 The Court's obligation is to impose a sentence that is
3 at least sufficient but not greater than necessary to serve the
4 purposes of sentencing identified in 3553(a).

5 We start by taking into account the guideline range,
6 which here is virtually moot, because the guideline range so
7 far exceeds the statutory maximum and becomes a non-entity. A
8 60-month sentence, the high end of the statutory range, would
9 be a sentence that is not greater than necessary virtually by
10 definition, because it's so far below the guideline, the
11 correctly calculated and acknowledged guideline range. But a
12 sentence at the statutory maximum here is not -- is neither in
13 my view appropriate or in view of all the circumstances here,
14 deserved.

15 A sentence needs to be calculated that takes into
16 account the history and the characteristics of the defendant
17 and the circumstances of the offense conduct, and that serves
18 the purpose primarily important here, the most significantly
19 important, 3553(a) factor is deterrence, and it's general
20 deterrence. I have no reason to think that Mr. Freitas as an
21 individual will engage in significant criminal conduct in his
22 life yet to be lived, but others are in a situation that may
23 tempt them to deal corruptly with government officials and that
24 may tempt government officials to respond in a way that is
25 corrupt and indefensible and criminal. And it is to those

1 individuals that the deterrence is directed most significantly.

2 I will say at this stage in the findings that Mr. Garon
3 seeks a non-custodial sentence under the circumstances
4 presented by Mr. Freitas. Irrespective of the comments of Mr.
5 Bullotta, irrespective of any question that the Court may have
6 had about how this was not a pay-to-play scenario, which I will
7 say it certainly was, but setting aside the Court's difference
8 of opinion with Mr. Garon on that point, I will say this for
9 orientation purposes, a non-custodial sentence is not in the
10 cards for Mr. Freitas. It would not be appropriate. So let's
11 dispense with any illusions in that regard.

12 Taking into account the seriousness of the offense
13 conduct, which as I said a moment ago was most assuredly a
14 pay-to-play situation, you give me money, I'll give you
15 something in return from the public entity that I have been
16 elected to serve faithfully and in a trustworthy manner. There
17 may be something about the position of trustee that is
18 particularly ironic in this case, as opposed to some of the
19 other officials, mayors, and councilmen and so forth, but it
20 seems to me a trustee, as such, is even more poignantly
21 identified as being in a position of trust with respect to the
22 public welfare, the public fisc and the public interest. So
23 general deterrence is the key to any sentence in a circumstance
24 such as this.

25 I have, of course, taken into account the various

1 letters. All of them are laudatory. All of them speak to what
2 a wonderful individual the defendant is. And I am confident
3 that they all were sincerely written. And the ones even that I
4 have not reviewed, because they were received just moments
5 before court today, and, and that because they are sought to be
6 kept off of the public record, I have not reviewed those, and,
7 and except for the intimations that I've heard from defense
8 counsel and defendant here, I don't know their substance. They
9 are, I think I can confidently assume, laudatory as well. Mr.
10 Freitas summarized in a sense that as a conclusion when he
11 commented on his wife's communication. So I'll, in a certain
12 sense, take that into account as well.

13 I'm confident in dealing with other people,
14 particularly members of his family, he's honorable and pleasant
15 and reliable and lots of other good attributes.

16 He had no, either no or no significant criminal
17 history, criminal history category 1, no earlier problem with
18 the law. And one wonders, from all that, how he so apparently
19 readily agreed to provide the information that he acknowledged
20 in his Rule 11 agreement, which I have read and recently so,
21 and had in mind as I was questioning Mr. Garon about how this
22 could not be any pay-to-play system as recognized under the
23 common understanding of that phrase.

24 Mr. Garon, for the defendant, speaks well and
25 eloquently, although I'm not persuaded. Mr. Garon said among

1 other things there's no substantiation for a prison sentence,
2 but I, I hasten to disagree. There absolutely is. And it's in
3 the realm of general deterrence that necessitates a sentence of
4 incarceration here.

5 Defendant is different from everyone else involved in
6 the case, counsel says. There are unique qualities to each
7 individual, and unique circumstances to which individual's
8 participation in a criminal enterprise as a whole, but the
9 common thread that runs through a lot of them runs through Mr.
10 Freitas as well, and that is a demonstration of corrupt
11 behavior, or at least a willingness to engage in corrupt
12 behavior which, when looked at in hindsight, becomes very
13 clear, just as Mr. Freitas said he can see with 20/20 clarity
14 looking backwards that this was corrupt behavior, criminal
15 behavior. He shouldn't have done it. He shouldn't have taken
16 the money. He shouldn't have provided the information. All
17 kinds of things he shouldn't have -- he probably shouldn't have
18 taken employment at the same time as he was working as an
19 elected official with an entity that either was engaged in or
20 could engage in contractual relations with the company that
21 pays him a living wage.

22 Mr. Bullotta points out, as the Court drew the
23 impression from the Reynolds's case testimony that I heard
24 about a month or thereabouts ago, a couple of months I guess,
25 that it seemed to me Mr. Rizzo purchased the services of a

1 trustee in hiring Mr. Freitas. He wanted to buy himself a,
2 lock, stock and barrel, a township official who could be
3 helpful. And what must have been the first or nearly the first
4 step in the direction of monetizing that relationship turned
5 out to be under surveillance by FBI, and no further steps were
6 taken. But I, I don't have anything before me that would
7 indicate that Mr. Freitas or Mr. Rizzo, had they not been under
8 surveillance, had they not been detected at that time, would
9 have continued along the path and continued to do things much
10 as they were done in this instance, the money, the loans that
11 weren't really loans, and so forth.

12 I don't find that Mr. Freitas was significantly
13 different, frankly, from the average player in his situation.
14 I'm confident enough in the circumstances to find Mr. Freitas
15 knew what he was doing. He knew it was wrong. He knew, for
16 example, he shouldn't have been voting on anything that had to
17 do with Rizzo. That's why he recused. If you know enough to
18 know that, you know enough to not provide confidential
19 information, bidding information such as was provided here.

20 All of this is a description of the offense behavior as
21 well as the history and characteristics of the defendant,
22 sufficient to support the Court's determination of an
23 appropriate sentence here. And I agree with the Government's
24 estimate. I agree with the Government's recommendation of a
25 departure below the statutory maximum of 60 months. It is

1 appropriate. The defendant should be given credit for his
2 cooperation, his effort to actively cooperate, his offer to
3 testify truthfully. I'm confident he would have testified
4 truthfully had he been needed. And those things are deserving
5 of provision and I do take them into account in determining the
6 Court's sentence.

7 Mr. Freitas, if you and Counsel would please rise for
8 the Court's imposition of sentence.

9 On Count One of the Third Superseding Information,
10 pursuant to the Sentencing Reform Act of 1984, the Court having
11 considered the sentencing guidelines and the factors contained
12 in 3553(a) that I just discussed here, most importantly general
13 deterrence, I hereby commit the defendant to the custody of the
14 U.S. Bureau of Prisons to serve a term of 20 months.

15 Upon release of imprisonment, the defendant shall be
16 placed on supervised release for a term of two years. A
17 special assessment of \$100 I hope has been satisfied, but it's
18 due immediately. The otherwise mandatory drug testing
19 condition is suspended due to lack of risk.

20 On supervision, the defendant shall abide by the
21 standard conditions of supervision as adopted by the U.S.
22 District Court for the Eastern District of Michigan and the
23 following special conditions:

24 Defendant shall participate in a program approved by
25 Probation Department for any mental health counseling that may

1 be deemed necessary.

2 And secondly, submit to psychological or psychiatric
3 evaluation, as may be deemed necessary by the probation
4 officer.

5 Number three, Defendant shall take any and all
6 medications related to emotional and mental stability as may be
7 prescribed by a physician within whose care he may be at the
8 dosages and at the times promoted. In other words, do not
9 discontinue medications against medical advice.

10 I impose no fines or costs, most especially because of
11 the defendant's immediate timely and truthful cooperation.

12 And I will ask the probation officer if there are any
13 other terms or conditions that I may have perhaps missed or
14 misstated in any fashion?

15 PROBATION OFFICER: No, your Honor. Thank you.

16 THE COURT: Thank you, Ms. Vue.

17 Any objection, concern or problem with the way in which
18 sentence was imposed, according to the Government, Mr.
19 Bullotta?

20 MR. BULLOTTA: No, your Honor.

21 THE COURT: Any objections that need to be raised for
22 the defendant, Mr. Garon, any misstatements or anything else
23 that you'd like to be -- that you would care to note?

24 MR. GARON: None, your Honor.

25 THE COURT: Thank you. Again, repeating what I said

1 earlier, near the outset, the defendant has behaved
2 appropriately on bond and I will allow his bond to continue
3 with the same reporting, same terms and conditions, Mr.
4 Freitas, that now exist until you're directed to report to
5 wherever you have been designated to commence your term of
6 incarceration. Do you understand, sir?

7 THE DEFENDANT: Yes.

8 THE COURT: Yes? All right. Thank you. That's all.

9 Call the next case.

10 MR. BULLOTTA: Your Honor, one more thing I could put
11 on the record? Pursuant to Paragraph 7 of the plea agreement,
12 the defendant has waived his right to appeal his conviction and
13 also, his right to appeal his sentence, since the Court has
14 sentenced him below 30 months.

15 THE COURT: Noted. You remember that provision of the
16 agreement, Mr. Freitas?

17 THE DEFENDANT: Yes.

18 THE COURT: There is to be -- you are not -- you've
19 agreed to not appeal from the conviction that was entered or
20 from the sentence in the way it was imposed. That was part of
21 your Rule 11 agreement. You acknowledge that, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Thank you. That's all. You
24 may leave, sir.

25 (Proceedings concluded, 3:19 p.m.)

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4 **CERTIFICATE OF REPORTER**

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6 As a Federal Official Court Reporter for the United
7 States District Court, appointed pursuant to provisions
8 of Title 28, United States Code, Section 753, I do hereby
9 certify that the foregoing is a correct transcript of
10 the proceedings in the above-entitled cause on the date
11 hereinbefore set forth.

12

13

14

Dated this 31st day of July, 2018.

15

16

s/ Christin E. Russell

Christin E. Russell

RMR, CRR, FCRR, CSR

Federal Official Court Reporter

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